

FILED

MAR 29 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WEI TANG CHEN,

Plaintiff - Appellant,

v.

STATE OF WASHINGTON,

Defendant - Appellee.

No. 05-35838

D.C. No. CV-05-05275-RBL

MEMORANDUM^{*}

Appeal from the United States District Court
for the Western District of Washington
Ronald B. Leighton, District Judge, Presiding

Submitted March 8, 2006^{**}

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges.

Wei Tang Chen, a Washington state prisoner, appeals pro se from the district court's judgment dismissing without prejudice his 42 U.S.C. § 1983 action alleging constitutional violations led to his criminal conviction. We have

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's dismissal pursuant to *Heck v. Humphrey*, 512 U.S. 477 (1994). *Osborne v. Dist. Atty's Office for the Third Judicial Dist.*, 423 F.3d 1050, 1052 (9th Cir. 2005). We affirm.

The district court properly dismissed Chen's action, because, if successful, it would necessarily implicate the validity of his conviction, and accordingly his only remedy is a writ of habeas corpus. *See Heck*, 512 U.S. at 486-87.

Chen's remaining contentions lack merit.

AFFIRMED.